

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

ARCTEC SERVICES

Employer

and

Cases 19-RC-14155
19-UC-683

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, GENERAL TEAMSTERS
UNION LOCAL 959, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTIONS
and
ORDER GRANTING UNIT CLARIFICATION PETITION IN PART
and
DENYING IN PART

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute appropriate voting groups:

Group A: The Environmental Coordinators, CSSPARS System Engineer and Electrical Engineer employed by the Employer at its Clear Air Station, Alaska, facility; but excluding all other employees.

Group B: The Production Control Supervisor and the Disaster Preparedness/Safety/Health/Training Administrator employed by the Employer at its Clear Air Station, Alaska, facility; but excluding all other employees.

¹ The parties filed briefs, which have been considered.

The Employer is engaged in the operation and maintenance of a radar facility at Clear Air Force Station, Alaska. Petitioner currently represents a unit ("Unit") consisting of technical employees and administrative support employees, including support specialists, finance specialists, engineering technician, message center operator, production control technicians, resource specialists, technicians, SSPARS computer, SSPARS radar, and systems coordinator.² Fairbanks Joint Crafts Council, not involved in the instant proceeding, represents craft employees including plumbers, electricians, mechanics, drivers, laborers, painters, and culinary workers.³

Initially, Petitioner sought to accrete three environmental coordinators, one production control supervisor, and one computer systems engineer to its existing unit of support and technical employees, or, in the alternative, a self-determination election among those employees. A hearing was held on September 24 and 25, 2001. In that hearing, the parties stipulated that the computer systems engineer would be added to Petitioner's existing unit based on a card check. The hearing was reopened on October 17 for the purpose of taking further evidence. In the reopened hearing, Petitioner withdrew from the stipulation regarding the computer systems engineer, and took the position that the computer systems engineer is a technical employee who is an accretion to the existing unit. The Employer agrees with Petitioner's position on the computer systems engineer. In addition, the parties stipulated that Michael Ostler, quality control administrator, is a managerial employee excluded from the Unit, and, based upon the record, I accept the parties' stipulation.

Classifications sought by Petitioner and remaining at issue after the reopened hearing are the environmental coordinators and the production control supervisor. In addition, the issue of any remaining unrepresented employees employed by the Employer at Clear Air Station was litigated in the re-opened hearing. Such employees include the electrical engineer, Craig Caywood; CSSPARS system engineer, Norm Carlson; and the disaster preparedness/safety/health/training administrator, Karen Shields. The parties stipulated that Caywood is a professional employee within the meaning of the Act; based on the record, I accept the parties' stipulation thereon. Petitioner is not seeking to represent Caywood or Shields, but expects they are statutory employees. The Employer contends that Shields is a managerial employee. Petitioner contends that Carlson is a technical employee and seeks his accretion to the existing unit. The Employer contends that Carlson is professional and a managerial employee.

The Unit Clarification Petition.⁴

The Employer and Petitioner are parties to a collective bargaining agreement with a term of April 4, 2000 to September 30, 2003. The position of environmental coordinator has been in existence since the early 1990s, and two of the three incumbents have been employed in the position since about October 1999. Similarly, the position of production control supervisor has been in existence for many years. There is no evidence that there have been any recent significant changes in the job responsibilities or duties of the environmental coordinators or of the production control supervisor.

Where the jobs of the involved individuals have been in existence since a time prior to the

² At hearing, Petitioner claimed that the technicians in its existing unit are professional employees, while conceding that the administrative support employees in that unit are nonprofessionals. It appears that Petitioner abandoned this claim, as it is not reiterated on brief. I thus conclude that the existing Unit contains no professional employees.

³ Fairbanks Joint Crafts Council was offered the opportunity to participate in this matter, but did not appear at hearing.

⁴ The UC petition is defective on its face, in that it does not state, as required, any description of the proposed clarification sought. However, based on the language in the certification of representative petition and statements made by Petitioner's attorney at hearing, I take the UC petition to request the clarification of Petitioner's existing unit to include environmental coordinators, the computer systems engineer, and the production control supervisor.

effective date of the current collective bargaining agreement and no recent changes have occurred to warrant finding the jobs to be “new” and thus accretions to an existing unit, the Board has held that a request to add old classifications to the Unit raises a question concerning representation and may not be resolved in a UC proceeding. *Monongahela Power Company*, 198 NLRB 1183 (1972). I conclude, therefore, that the environmental coordinators and the production control supervisor are not an accretion to Petitioner’s existing Unit, and I shall dismiss the unit clarification petition with respect to those positions as untimely.

Gary Moll, computer systems engineer.

The parties initially stipulated that Moll would be added to Petitioner’s existing Unit on the basis of a card check without further litigation. Petitioner withdrew from that stipulation at the opening of the remanded hearing.

Moll works in the 800 Building alongside radar and computer technicians who report to Randy Creek, the communications electronics manager, and who are included in Petitioner’s existing Unit. Moll also reports to Creek. Moll basically performs in-depth maintenance on computer hardware. Other employees who report to Creek are technicians working on the radars, computers, communications systems, telephone system, computer security, frequency management, and radiation hazards.

Moll’s position was established when the new radar system went online on February 1, 2001. The position does not require any advanced degree, although it does require at least ten years of prior experience in operations and maintenance of CYBER and MODCOMP⁵ computer systems. Moll’s resume shows he has the required experience.

On brief, both Petitioner and the Employer take the position that Moll is a technical employee rather than a professional employee, and that he shares a community of interest with the technical employees in Petitioner’s existing Unit such that accretion of Moll’s position to the existing unit is appropriate. The record shows that her position was created during the life of the current collective bargaining agreement. Inasmuch as the parties are in agreement with respect to Moll, and the record supports a finding that Moll’s position is an accretion to Petitioner’s existing unit, I shall grant the unit clarification petition with respect to the computer systems engineer.

Supervisory Status of the Production Control Supervisor.

Toby Hall has been the production control supervisor since May 2000. There are six employees in his group. All but one were already working in their positions when Hall became production control supervisor.

Hall’s group does operations and maintenance. It is the contact point between the “customer” (i.e., the Air Force) and the Employer for work orders before they go out to the workforce in the maintenance and repair department. His group handles anything from minor repairs to minor construction; they do not normally do any new construction. There are two planners in the group, Bruce Perotti and Jim Nichols. They split up the work between themselves. Perotti handles procurement requirements. Nichols does more in-depth planning. For something like remodeling an office, Nichols gets the material requirements and the labor requirements and puts them together in a package to submit to the Air Force for approval.

⁵ CYBER and MODCOMP are undefined in the record.

Another employee in Hall's group is Joe Howell, who maintains the real property records for the facilities. Howell also does all the time accounting from the daily time sheets for the craftsmen from the shops.

Another employee in Hall's group is Mark Lesle, who is the scheduler. He schedules the weekly activities in accordance with the in-house work program provided to the Air Force on a monthly basis. He is also in charge of the recurring work program and the frequencies on which those things are done, and in charge of inputting all that information into the computer.

Also in Hall's group is Terry Campbell, who handles all the service calls, and is in charge of the management of all the work orders on the site. He deals with the craft superintendent or foremen.

Also reporting to Hall is Roberta Scott, the supply specialist. Hall described her as being "on loan" to him, apparently for him to "keep an eye on." She does the material control for logistics and word-processes all purchase requisitions. Her actual supervisor is in logistics, about a mile away.

Hall described his job as consisting of monitoring the work of the others, and answering inquiries from Air Force personnel, such as when a certain job was done. He said that he has no say about employees working overtime, and that no one specifically told him he can discipline employees. The priority of the work orders has already been decided before the work gets to his section, and "command interest" items (i.e., items in which the Air Force Commander is interested) and safety items have precedence. If a priority work order comes in, Hall tells employees, "here is something that needs to be done right away". The employees have been working there a long time, know their jobs well, and require no direction from him.

Hall reviews time sheets and leave requests for his crew. He checks to make sure these time sheets are filled out correctly, signs them, and passes them on. For leave requests, he makes sure that there will not be too many people out at any one time, then hands the requests on to upper management. He doesn't know whether he has authority to deny a request for leave. The employees are all cross-trained in each other's jobs, and can easily cover for one another when one is on leave.

He has informally counseled employees about repeated errors, such as putting an X in the wrong box, or not entering labor hours for a work order on the computer. On those occasions, the employees have always corrected their errors. There is no evidence that any record is kept of these occurrences.

Hall reports to the civil engineering manager, a position currently occupied by James Stalter. Others who report directly to Stalter include the environmental coordinators at issue herein, the engineering supervisor, the maintenance and repair superintendent Ken Frazier, and the SSPARS facility maintenance supervisor Ed Van Kuerne.

Stalter, who is currently acting in the civil engineering manager position, testified that Hall is responsible for making sure the employees under him get their work done. Hall prioritizes work orders and gives them to the planners. Hall meets once a week with the scheduler, Mark Lesle, and with the lead man from the shops, and they look at the work requirements for the following week. Hall reviews and approves the project schedules. Stalter also said that it would be Hall's job to "initiate whatever disciplinary action was called for." There is no evidence that any employee in Hall's group has been disciplined. "Initiation" is an undefined term as used in the testimony – it could mean passing a recommendation forward, which recommendation might or might not be effective; or it could simply mean bringing a situation to his supervisor's attention.

Heather Sewell, the Employer's on-site human resources manager, also testified concerning Hall's supervisory status. It does not appear that Sewell has any direct knowledge of any exercise of supervisory authority by Hall. She said that she knows that Hall has the "same" authority as other supervisors because employees have come to her with complaints about Hall, and that the employees "know he's a supervisor." For example, an employee complained to her that Hall had given him an assignment with a deadline, and then gave him another assignment before he had had the opportunity to complete the first one.

Section 2(11) of the Act defines a "supervisor" as:

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

There is no clear, specific evidence here that Hall has any statutory supervisory authority.⁶ He has some authority to assign and direct the work of the planners, in that he gives them jobs to do, but there is no evidence that these "decisions" require any independent judgment. The priorities of the various jobs are basically determined by Air Force policy or directive. Moreover the planners have split up the work between themselves along general lines, and the others have their specific standing assignments. Further, there is no evidence that Hall's approval of time sheets is other than routine or clerical in nature. His involvement in leave requests appears to be in the nature of reporting facts to a supervisor. He clearly does not grant or deny requests on his own, since the decision is made by his supervisor. There is no indication he recommends any action be taken by his supervisor, as opposed to simply appraising him of the facts.

As to "responsible direction" of the workforce, I note that each employee has an established role. The record does not reflect Hall as a puppeteer, coordinating and controlling strings to each of his such crew. He does perform a work scheduling function, but the actual work that is performed and the assignment thereof is performed by others such as craft supervisors. He does minimal scheduling of work for his team, but there is no sense in the record that he does any substantial shuffling of his crew, orders or issues directives to them, performs close monitoring of their work, etc. There is no indication he is responsible for their work quality, nor is there any indication of discretion in monitoring of their timesheets. There is no indication of any evaluation scheme or job description that holds Hall as "responsible" for the success or failure of his subordinates, or judges his performance by looking to the overall performance of the group. There is no indication Hall fills out any employee evaluations. There is no evidence showing Hall has been given a mantle of authority or even that Hall's group has been told by management that Hall is "boss" and they must follow his instructions.

In *NLRB v Kentucky River, a Community Case*, 523 U.S. ____ (2001); 167 LRRM 2165; the Supreme Court rejected the Board's restrictive application of the term "exercise of independent judgment". Judgment is now "independent", I conclude, if made by the individual without significant restriction on decision making by others or by outstanding guidance, instructions, standards, etc. The *quality* of the judgments - their difficulty, their importance, that fact that the judgments are normal or standard for one with the advanced training of the individual in question - has no bearing on the issue of the independence of the judgment.

⁶ I place minimal reliance in the testimony of HR manager Sewell. She had no first-hand knowledge, and testified in conclusory, and not particularly useful terms, that he had the "same authority as other supervisors"(whatever *that* is).

I note that the statute sets out a list of specific indicia that make one a supervisor, such as to “hire” or “fire” or “discipline”, etc. The criterion of “responsibly direct” is much vaguer and ambiguous. From my reading of the cases, and the application of standard statutory interpretation rules, it is obvious that “responsible direction” is something that does not necessarily include any of the other statutory indicia.⁷

A review of cases raising issues of “responsible direction” shows few that turned specifically on that single indicia. Board cases are not always precise in delineating or defining the scope of that term. Quite typically, a number of functions performed by the alleged supervisor are listed, followed by a conclusory statement that the individual is a supervisor because he responsibly directs the workforce and assigns or disciplines or some other statutory indicia. Thus, one cannot tell what specifically satisfied the “responsibly direct” criterion.

This topic was discussed in some detail in *Monongahela Power Co. v. NLRB* (CA4, 1981), cited by the Board with approval in *DST Industries, Inc.*, 310 NLRB 957 (1993).⁸ There the Court found no supervisory indicia present except for responsible direction.

Mindful that the powers in Section 2(11) are to be read in the disjunctive, we are of the opinion that there exists sufficient evidence in the record to demonstrate that CRF’s “responsibly direct” other employees and in doing so utilize the requisite “independent judgment.”

That the CRF “directs” other employees is readily apparent from the record and further is exemplified by his job description, which provides generally that he “direct and participate in activities required to achieve safe, economical, and reliable operation of all electrical, mechanical, and steam generating power production equipment.” The question is whether that direction is “responsible” within the meaning of Section 2(11).

“Responsibility” is defined as being answerable for the discharge of a duty or obligation. Responsibility includes judgment, skill, ability, capacity, and is implied by power. *Ohio Power Company v. NLRB*, 176 F.2d 385, 387, [CA6, 1949; balance of citation omitted]. The CRF is in charge of the control room and therefore the entire operation of the plant. It is his expertise and judgment on which other employees, including his supervisors, rely. This is illustrated by the evidence adduced at the representation hearing.

Plant Manager Hackett stated at the representation hearing that CRF’s are considered by him to be supervisors, and they have been told they are supervisors. They are considered to be the immediate supervisors of Operators A, B, and C on a particular shift. Mr. Hackett testified that the CRF’s have “constant interaction” with these individuals. CRF’s do not normally direct the activities of the maintenance men but have the authority to put them to work when and where needed.

There is no dispute that the CRF is responsible for coordinating the activities of the operators and maintenance men during startup and shutdown. In emergency situations, he is to analyze and resolve difficulties which arise from the operation of the machinery. After doing so, he often tells operators what procedures they should then follow in dealing with those difficulties. The CRF can determine whether a problem has been satisfactorily resolved by observing the monitors. Emergencies may arise which allow no time to wait until a shift superintendent arrives; the CRF

⁷ If “responsibly direct” included, say, the ability to hire, there would be no need to have “responsibility direct” as a separate indicium, since it would be redundant.

⁸ I recognize that I am bound by Board precedent. However, this case *was* cited with approval in *DST*. Moreover, the Board’s interpretation over the past ten years regarding its analysis of “responsible direction/independent judgment”—particularly nurses—has been rejected by the Supreme Court. A new paradigm seems warranted.

moves first and advises his supervisors later. We think this illustrates that the CRF “responsibly directs” other employees.

Based on the foregoing, I find a lack of substantial evidence to show that Hall responsibly directs the workforce. I note first that it is the party asserting supervisory status who has the burden of establishing same. I do not see Hall on this record as “answerable” for the operation of the section in the sense that he is personally held responsible for the work of the others – i.e. if they fail, he fails; if they succeed, he succeeds. I see little indication of capacity or power – possessed or utilized - to force compliance with instructions, goals, etc. In fact, the record does not show Hall to be an active or intervening boss, such as watching work, ordering re-work, adjusting usual practices or instructions, moving employees around, changing schedules, etc. There is no indication he judges or assesses employee performance. The record shows no indication the employees view Hall as “boss” or that they were told so by management. The most the record shows is he maintains something like a flow chart of work that is desired by others, which will be performed by the trades personnel under the direction of others, which is based on priorities set by practice or the instructions of others; and that he advises others as to what is feasible unless they shift their priorities.

Based on this record, I conclude that Hall is not a Supervisor. He has none of the Supervisory indicia, including responsible direction of the work force. I also see no collection of secondary indicia or “close” statutory indicia that might be agglomerated into “responsible direction”. In the end, I see little authority exercised in a discretionary manner over employees.

Professional Status Issues.

The Employer contends that the environmental coordinators and the CSSPARS system engineer are professional employees within the meaning of Section 2(12) of the Act. Petitioner contends that they are all technical employees.

Environmental Coordinators.

There are three environmental coordinators: Donna Harding, Heidi Young, and John Basille. The Employer contends that the environmental coordinators are professional employees, while Petitioner contends that they are technical employees. The Employer also contends that they are managerial employees.

There are various federal and state regulations regarding the impact the Clear Air Station facility makes on the environment, including air, water, and natural and cultural resources. The environmental coordinators assure that the facility complies with such regulations. In this effort, they follow programs developed by predecessors or develop new programs themselves as needed; they perform testing or assure that testing is performed; they verify that other employees on site are following correct procedures with respect to such matters as storage and disposal of certain materials; and they make recommendations for remedial actions where needed.

Programs that the environmental coordinators implement and maintain include those involving testing of wastewater, drinking water, and ground water; hazardous waste management; disposal of toxic substances such as PCBs and asbestos; pollution prevention; recycling; hazardous-material management, and solid waste management. The three environmental coordinators have divided the work up among themselves by subject area.

The three environmental coordinators are the only people at the facility who have expertise in environmental matters. When they complete a project or have questions about their work, they report to the Employer’s quality assurance person located at Peterson Air Force Base in Colorado. Generally speaking, they work independently, without the need for day-to-day direction or close supervision.

The Coordinators deal directly with Air Force personnel on environmental matters, including meeting with the Base Commander and making recommendations to him regarding actions to be taken. They have some responsibilities in budgetary matters, in that they forecast funding needs for future years in five to seven areas, such as pollution prevention and air permits. Much of this forecasting is based on historical data, such as for water sampling; they know they have to send out a specified number of water samples every month and how much that will cost. If the government announces a new program to begin in a future year, they assess what the new program will entail, obtain relevant price quotes from vendors, and determine an amount for the budget. They can select the vendor for a purchase request under \$2,500. Bids are generally required for purchases over that amount.

The environmental coordinator position requires a bachelor of science in environmental science, engineering management, chemistry, or biology, and a master's degree in environmental engineering or science is preferred. Donna Harding has a bachelor of arts and a master of arts in environmental science, and has been working in the field since about 1980. Heidi Young has a bachelor of arts in biology and a master's degree in civil engineering, and has been working in the environmental field since at least late 1998. John Basille has a bachelor of science in biology with a minor in chemistry/environmental science, and has worked in the environmental field since about 1990.

Norm Carlson, CSSPARS system engineer.

Carlson reports to Frank Hall, the technical site manager. Carlson oversees the operational systems for the radar, and reports his findings directly to Air Force personnel. Carlson's position has existed only since about the beginning of 2001. The Employer contends that Carlson is a professional employee and a managerial employee. Petitioner contends that Carlson is a technical employee and is an accretion to Petitioner's existing unit.

Carlson's job description lists his duties as: monitor certain computer files and computer/radar operations and maintenance logs on a daily basis; analyze occurrences of system outages or operational degradation; document unusual or unique problems on specified forms as well as make proposals for system modifications for corrective or preventative action; assist the Missile Warning Operations Center personnel in using simulation media to support system tests, training, and evaluations; serve as an advisor to the Operations Approval Review Board; participate in system test plans and procedures; provide general liaison and support to Air Force agencies and contractors; respond to emergency requests for assistance with system or computer problems; participate in the installation and evaluation of all software and hardware modifications; maintain a copy of baseline and support documentation; and participate in the development and planning of certain tests and evaluations to determine operational effectiveness and suitability of a system under realistic operations conditions. The system that Carlson is responsible for is the radar system, which has interrelated computer hardware and software. Carlson deals with the programming for the computer.

Carlson's job description states that a bachelor of science degree or higher in computer science, software engineering, software management, or another computer-related field is required, and that related experience with PAVE PAWS⁹ systems may be substituted for formal education, i.e., seven years experience and an associate degree, or nine years experience with no college degree. Carlson's resume states that he attended the University of Washington for five years, 1955-1961, majoring in mathematics with a minor in physics, but does not affirmatively state that he earned any degree there. He did earn a bachelor of theology in 1973 from Trinity Bible College. In addition, Carlson has 40 years of computer

⁹ "PAVE" is undefined in the record. "PAWS" is Phased Ray Warning System.

experience, including 27 years on large real time radar systems, and 26 years experience as a hardware/software systems engineer.

In addition to reporting to Frank Hall, Carlson also has reporting responsibility to the Director of Operations, 13th Space Warning Squadron, who is a major in the Air Force. At other radar sites, Carlson's job is under civil service, but the government was unable to find a qualified candidate to work at Clear, and therefore added Carlson's position to the contract with the Employer, with the provision that although he is paid by the Employer, he has direct reporting responsibility to the Air Force for oversight of the radar system. That is, he reports to Frank Hall regarding administrative matters such as vacations and approval of time sheets, and reports to the Air Force Director of Operations with respect to his job functions. Carlson does not work with any other of the Employer's employees.

Conclusions as to Professional Status

Section 2(12) of the Act defines a "professional employee" as:

- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
- (b) any employee, who (i) has completed the course of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

The Board discussed making determinations as to professional status in *Western Electric Company*, 126 NLRB 1346, 1348-1349 (1960):

Section 2(12)(a) defines a professional employee in terms of the work he performs. And Board decisions make it clear that it is the work and not individual qualifications, which is controlling under Section 2(12)(a). Therefore, if the work satisfies the Act's criteria, the employees who engage in it are professional employees; if the work does not meet the specified requirements, the employees performing it are not professional employees. This is not to say that the background of individuals within a disputed group is an irrelevant consideration, for background is examined for the purpose of deciding whether the work of the group satisfies the "knowledge of an advanced type" requirement of Section 2(12)(a). If ... a group of employees is predominantly composed of individuals possessing a degree in the field to which the profession is devoted, it may logically be presumed that the work requires 'knowledge of an advanced type.' Conversely, if few in the group possess the appropriate degree, it logically follows that the education characteristics of the work are not those requiring the utilization of advanced knowledge. [Footnotes omitted.]

With respect to the environmental coordinators, all three have bachelor's degrees in relevant fields, and two have master's degrees. Their work is predominantly intellectual and varied, in that they must interpret and apply federal, state, and Air Force regulations to the particular circumstances found at

the Clear Air Station facility. Further, they work independently, with no direct on-site supervision, as they are the only personnel at the facility who have expertise in environmental matters. They make assessments of any issues that arise and make recommendations to the Air Force Commander as to remedial action. Thus their work requires consistent exercise of discretion and judgment in its performance. The output produced is varied: it may involve sending samples, such as water samples, out for testing on a regular basis; or inspecting and verifying that hazardous waste is being handled correctly. It may also involve the creation of a new program for dealing with some environmental issue, or determining how to implement and maintain a program initiated by others. Thus their work cannot be standardized in relation to a given period of time. I conclude that the environmental coordinators are professional employees within the meaning of Section 2(12) of the Act.

With respect to Norm Carlson, the CSSPARS system engineer, his work requires that he analyze certain events such as system outages; make proposals for system modifications for corrective action; participate in the evaluation of hardware and software modifications and in the development and planning of tests, and evaluations to determine the operational effectiveness of a system – work which is intellectual and varied in character, involves consistent exercise of discretion and judgment, and is not standardized in relation to a given period of time with respect to output.

The job description for Carlson's position states that a bachelor's degree is required, but the record does not establish that Carlson has any college or university degree in a relevant field, although he does have at least five years of study at the University of Washington in mathematics. In addition, Carlson has 40 years of computer experience, much of it involving radar systems. I conclude that the work which Carlson performs requires knowledge of an advanced type, such as described in Section 2(12)(a)(iv) of the Act; knowledge which Carlson acquired alternatively through a combination of university training and many years' experience working in the field. Therefore, I conclude that Carlson is a professional employee within the meaning of Section 2(12) of the Act.¹⁰

Issues as to Managerial Status.

The Employer contends that the environmental coordinators, the CSSPARS system engineer, and the disaster preparedness/safety/health/training administrator (Karen Shields) are managerial employees.

Karen Shields, disaster preparedness/safety/health/training administrator.

As her job title suggests, Shields has responsibilities in a number of areas. Disaster preparedness involves assuring that the facility's two shelters¹¹ are kept in readiness and that the teams who would operate the shelters are organized, including choosing team members according to requirements set by Air Force regulations and manuals. She makes sure that the installation warning system is tested every other week.

Safety and health training involve Shields implementing training for personnel about safety and industrial hygiene, such as training personnel in confined spaces safety; making sure everyone who is required to wear safety shoes is wearing them; and making arrangements for outsiders to come in to train in such matters as first aid. It is her job to know the safety and health regulations that apply to Clear and

¹⁰ Carlson's position is new, having been created during the life of the current collective bargaining agreement. As such, if he were a non-professional, he would be accreted into the Unit without vote. However, there are no other professionals already in the Unit. Carlson, as a professional, cannot be added to the Unit without an election to do so.

¹¹ These are shelters intended to provide protection to personnel in the event of nuclear warfare.

to know what kind of training is needed to comply. She also maintains records of the safety and health training.

Shields' position requires four years' prior experience in developing and managing a disaster preparedness program and experience in general office duties. No degree is required. Shields has a high school education and prior experience with the National Park Service.

The Employer contends that Shields is a managerial employee because she is the sole point of contact between the Employer and the Air Force regarding disaster preparedness, has broad discretion in matters pertaining to disaster preparedness, performs her duties without supervision, and uses independent judgment in deciding when and how training is to be conducted. Petitioner did not include Shields in the group of employees sought herein, and takes no position on brief as to her unit placement.

Conclusions as to Managerial Status.

The Board defines managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *Bell Aerospace*, 416 U.S. 267 (1974); *Palace Laundry Dry Cleaning*, 75 NLRB 320, 323, Fn. 4 (1947). In *Yeshiva University*, 444 U.S. 672 (1980), the Court noted that managerial employees are "much higher in the managerial structure" than those explicitly mentioned by Congress [i.e., supervisors], which "regarded them as so clearly outside the Act that no specific exclusionary provision was found necessary." Individuals who have authority to commit the employer's credit in substantial amounts through the exercise of discretion which is not ordinarily reviewed have been found to be managerial employees. *Concepts and Designs*, 318 NLRB 948 (1995)

None of the employees at issue as to managerial status formulates and effectuates any management policies. The environmental coordinators implement and maintain environmental programs, and occasionally formulate such a program, but they do not formulate environmental policy, which is, in large part, formulated by governmental agencies. Likewise, Shields does not formulate any policies. There is no evidence that Carlson is involved in any way with the formulation of policy. The record does not support any conclusion that the environmental coordinators, or the CSSPARS system engineer, or the disaster preparedness/safety/health/ training administrator meet the definition of a managerial employee as set forth in *Bell Aerospace* and *Palace Laundry Dry Cleaning*.

Summary Headcount

Computer System Engineer Moll has been accreted by agreement of the parties, and is no longer an issue in the proceeding.

QC Administrator Osther has been stipulated to be a managerial employee. I accept that stipulation. He is no longer an issue, or involved in these proceedings.

Environmental Coordinators Harding, Young and Bastite; CSSPARS Engineer Carlson; and Electrical Engineer Caywood (the latter by stipulation) are professional employees.

Production Control Supervisor Hall is not a statutory supervisor. No other excluding contentions were advanced.

Disaster Preparedness/Safety/Health/Training Administrator Shields is not a managerial employee. No other exclusionary contentions were advanced.

Voting Group Conclusions.

A bargaining unit must be "appropriate". Basically, the group must have sufficient commonality among all the members, and the group must be distinct, separate, and lack a community of interest when compared with those not in the proposed unit. Occasionally, as here, there are a few miscellaneous employees who for various reasons were not included in the established Unit, but could have or "should

have” been. In such circumstances, this miscellaneous group may vote together, for or against representation, even though they would ordinarily not constitute an appropriate unit under standard principles.¹² Such a group is referred to as a “residual voting group”. Such a group must encompass all remaining non-represented employees who would/could/should belong in the Unit were there no contrary bargaining history to exclude them. The union may not pick and choose from among those in the residual voting group – it’s all or nothing. The voting group, by voting for representation by the incumbent petitioner, is also deemed to be voting for inclusion in the established Unit.

As noted, the Board will find a residual voting group to be appropriate *only* if it includes all unrepresented employees of the type encompassed by the Unit¹³. *Carl Buddig*, 328 NLRB No. 139 (1999); *Fleming Foods*, 313 NLRB 948 (1994). Here, Petitioner is seeking to add by election environmental coordinators, who I have found to be professional employees, as well as an unrepresented non-professional employee, i.e., the production control supervisor.¹⁴ The record reveals that there are additional professional employees, i.e., the CSSPARS system engineer and the electrical engineer. In addition, there is an additional unrepresented non-professional employee, the disaster preparedness/safety/health/ training administrator. These additional employees must all be included in the voting groups herein in order for the union to add some technicals and some professionals.

This election is further complicated by the fact that the Petitioner seeks (or must accept) inclusion of both professional and non-professional employees. Under Section 9(b)(1), professionals may not be included with non-professionals in a bargaining unit without the professionals’ vote, separate from the non-professionals, for inclusion in a mixed unit of professionals and non-professionals. This is referred to as a *Sonotone*¹⁵ election. Because the environmental coordinators, CSSPARS system engineer, and electrical engineer are professional employees, they are entitled to the benefit of a *Sonotone* election to determine if they wish to be included in the technical Unit.

I find that two voting groups are appropriate herein¹⁶, as follows:

Group A: (Professional) The Environmental Coordinators, CSSPARS System Engineer, and Electrical Engineer employed by the Employer at its Clear Air Station, Alaska, facility; but excluding all other employees (including Computer System Engineer Moll)¹⁷.

Group B: (Non Professional) The Disaster Preparedness/Safety/Health/Training Administrator and the Production Control Supervisor employed by the Employer at its Clear Air Station, Alaska, facility; but excluding all other employees.

The employees in “Professional” Voting Group A will be asked the following question on their ballots:

Do you desire to be represented for purposes of collective bargaining by the International Brotherhood of Teamsters, General Teamsters Union Local 959, AFL-CIO?

If a majority of the Group A employees vote "yes" to the question, they shall be deemed to have

¹² This discussion does not encompass situations where there are multiple units already in existence represented by one union, or where another labor organization is involved in seeking to represent the residual group.

¹³ I.e., a residual voting group in a production and maintenance might add the warehousemen, or tool and die makers, but not office clericals.

¹⁴ The technical employee “Computer Systems Engineer” has already been accreted by agreement.

¹⁵ *Sonotone Corp.*, 90 NLRB 1236 (1950).

¹⁶ The Union seeks to have the professionals included in the existing Unit. It is not seeking a separate professional unit unless forced to do so.

¹⁷ Moll was stipulated to be a technical employee accreted with the unit. Thus, by agreement of the parties, he is now already included in the Unit.

voted for representation by Petitioner as part of the existing Unit. Their ballots would then be mixed with the ballots of Voting Group B to determine the representation question in one combined lot. If a majority of Voting Group A does not vote for inclusion, they shall remain unrepresented.

The employees in “Non-Professional” Voting Group A shall vote for or against representation by Petitioner. A vote in favor of representation will be deemed for representation as part of the established Unit.

If a majority of the employees voting in Group B [plus those from Group A (depending on their vote on their question)] vote for representation, they would be included in the existing Unit. If there is no such vote in favor by a majority, those group(s) shall remain unrepresented.

There are approximately 5 employees in Group A, and approximately 2 employees in Group B.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the voting groups found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting groups who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL BROTHERHOOD OF TEAMSTERS, GENERAL TEAMSTERS UNION LOCAL 959, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Resident Officer in Anchorage within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The

list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Anchorage Resident Office, 222 West 7th Avenue, Box #21, Anchorage, Alaska 99513, on or before (date). No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (907) 271-3055. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

ORDER

IT IS HEREBY ORDERED that the unit clarification petition filed herein be dismissed as to the positions of environmental coordinators, production control supervisor, and CSSPARS system engineer

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by the 4th day of December 2001.

DATED at Seattle, Washington, this 20th day of November 2001.

Paul Eggert, Regional Director
National Labor Relations Board
2948 Jackson Federal Building
Seattle, Washington 98174

355-2200